

In re: Weathersbee, 1990 WL 599374 (Bankr. S.D.Ga., Jan 30, 1990)
1990 Bankr. LEXIS 334

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>89-10237</u>
RONNIE WILLIAM WEATHERSBEE)	
)	
Debtor)	
)	
THE UNITED STATES OF AMERICA)	FILED
on behalf of the)	at 4 O'clock & 31 min. P.M.
INTERNAL REVENUE SERVICE)	Date: 1-30-90
)	
Movant)	
)	
vs.)	
)	
RONNIE WILLIAM WEATHERSBEE)	
)	
Respondent)	
Route 12, Box 129-B)	
Hephzibah, Georgia 30815)	
SS# 256-64-7122)	

ORDER

Movant, the United States of America on behalf of its agency, the Internal Revenue Service (hereinafter referred to as "IRS") filed this motion to dismiss the Chapter 13 case of debtor, Ronnie William Weathersbee, contending that the debtor's Chapter 13 plan had not been filed in good faith. After considering the record, arguments of counsel, and briefs submitted by the parties,

the court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Debtor filed for protection under Chapter 13 of the Bankruptcy Code on February 17, 1989.

2. Debtor admits failing to file tax returns for 1983, 1984, and 1985. In September, 1987, the debtor brought suit in the United States Tax Court contending that the taxes assessed against his wages and compensation for the above years violated his constitutional rights. The Tax Court dismissed the debtor's suit as frivolous and awarded the IRS Five Thousand and No/100 (\$5,000.00) Dollars as damages for defending the suit. Weathersbee v. Commissioner of Internal Revenue, Case No. 29665087 (Tax Ct., 1988). The debtor appealed the dismissal of the action to the United States Court of Appeals for the Eleventh Circuit. The Court of Appeals dismissed the appeal as frivolous and awarded the IRS an additional One Thousand Five Hundred and No/100 (\$1,500.00) Dollars in damages for responding to the appeal. Weathersbee v. Commissioner of Internal Revenue, Case No. 88-8772 (11th Cir. filed August 9, 1989).

4. In this proceeding, the IRS has filed an amended proof of claim dated October 13, 1989 for Seventy-Thousand Six

Hundred Sixty-Two and 03/100 (\$70,662.03) Dollars asserting taxes, penalties and interest due for the years 1983 through 1988. While the debtor's tax liability for the years 1983 through 1985 was decided in the Tax Court case, according to the amended proof of claim liability for the years 1986 through 1988 remains unliquidated. The debtor contends he mailed tax returns for these years to the IRS Service Center in Atlanta, Georgia as required by law. The IRS records, however, show no returns were received by the IRS until September 21, 1989. (Movant's Exhibit No. 5) Each return was signed by the debtor and dated in April of the respective years in which they were due. (Debtor's Exhibits Nos. 1 through 3). Other facts of this case support questioning the debtor's assertion that the returns were timely filed. As late as December 18, 1986, the debtor (in his employee's withholding allowance certificate, Form W-4 1987) contended he was exempt from federal tax withholdings. As late as February 15, 1989 the debtor was making the same assertion on withholding allowance certificate form G-4 for the State of Georgia. (Movant's Exhibit No. 6) The debtor also was unable to produce copies of these returns at the First Meeting of Creditors held on April 17, 1989, only one day after the 1988 filing deadline and 3 days after he alleges to have signed and mailed the 1988 return. After the Court of Appeals decision, an officer of the IRS furnished the debtor with blank copies of tax form 1040 for 1986, 1987, and 1988

in September, 1989. It was after that time that the debtor produced the returns he had allegedly filed with the IRS as they became due. The evidence is sufficient to conclude that the debtor did not file tax returns for 1986, 1987, or 1988 until September, 1989.

5. Upon receipt of the debtor's G-4 1989 withholding certificate dated February 15, 1989 and a printed form letter requesting that the debtor's employer not disclose any records, forms or paper work about the debtor to any government agent or agency without his permission or valid court order, debtor's employer through its attorneys responded, by letter dated March 2, 1989, advising the debtor of the employer's obligation under Georgia law to report his claim of exemption from state withholding tax. on March 5, 1989 the debtor filed an amended form G-4 for 1989 claiming 10 exemptions.

6. Debtor admitted to have been affiliated with a "tax protest" organization but contends he did not know of the purpose of the organization. In spite of his earlier assertions to the contrary made as late as February 15, 1989, the debtor now acknowledges that he is a person responsible for paying income taxes.

7. The debtor has steadfastly refused to cooperate with the IRS in its efforts to obtain information about the

debtor's tax obligations. The IRS was forced to obtain that information from third party sources.

8. Debtor's petition indicates the only obligations owed by the debtor are taxes, his home mortgage, and one unsecured creditor, CSRA Federal Credit Union, who is owed Two Thousand and No/100 (\$2,000.00) Dollars. CSRA Federal Credit Union failed to file a proof of claim in this case by the bar date, and the debtor did not file a claim on its behalf. According to the claim filed by the holder of his home mortgage, he is current with that obligation.

CONCLUSIONS OF LAW

The IRS contends that the filing of this proposed Chapter 13 plan by this debtor is a continuing effort by the debtor to thwart the tax laws of the United States. The IRS, therefore, objects to the court confirming the Chapter 13 plan on the grounds that the plan was not proposed in good faith.¹

Although a comprehensive definition of good faith is not practical, the basic inquiry in a good faith analysis should be whether under the circumstances of the case there has been an abuse of the provisions, purpose, and spirit of Chapter 13 in the

¹The relevant confirmation criteria set forth in 11 U.S.C. §1325(a)(3) provides in part:

(a) [T]he court shall confirm a plan if - -
(3) the plan has been proposed in good faith
and not by any means forbidden by law.

proposed plan. Kitchens v. Georgia Railroad Bank and Trust Co., 702 F.2d 885 (11th Cir. 1983).² The court in Kitchens set out a non-exhaustive list of thirteen (13) factors to be considered in a good faith analysis:

1. The amount of the debtor's income from all sources;
2. The living expenses of the debtor and his dependents;
3. The amount of attorneys fees;

4. The probable or expected duration of the debtor's Chapter 13 plan;
5. The motivations of the debtor and his sincerity in seeking relief under the provisions of Chapter 13;
6. The debtor's degree of effort;
7. The debtor's ability to earn and the likelihood of fluctuation in his earnings;
8. Special circumstances such as inordinate medical expenses;
9. The frequency with which the debtor has sought relief under the Bankruptcy Reform Act and its predecessor;
10. The circumstances under which the debtor has contracted his debts and his demonstrated bona fides, or lack of same, in dealing with his creditors;
11. The burden which the plan's administration would place upon the trustee;
12. The substantiality of repayment; and
13. The potential nondischargeability of debt in a Chapter 7 proceeding.

Kitchens v. Georgia Railroad Bank & Trust Company, 702 F.2d 885, 888 (11th Cir. 1983).

²The debtor urges this court to reject the "totality of circumstances" test set forth in Kitchens in favor of the "disposable income" test espoused by other circuits. See, e.g., In re: Lemaire, 883 F.2d 1373 (8th Cir. 1989). However, the "totality of circumstances" test set forth in Kitchens remains the law in this circuit. See, e.g., In re: Saylor, 869 F.2d 1434 (11th Cir. 1989) (applying the Kitchens analysis to determine that a Chapter 13 plan had been filed in good faith).

The application of the following Kitchens criteria to the facts of this case reveal that this plan fails to meet! the confirmation criteria of good faith:

1. The motivations of the debtor and his sincerity in seeking relief under the provisions of Chapter 13.

The debtor maintains that the proposed plan was filed with the spirit and purpose of Chapter 13 in mind - - to provide him with an opportunity to pay the IRS the taxes he owes and give him a much needed fresh start. The debtor maintains he is no longer affiliated with any "tax protester" organization and views himself as an individual responsible for paying income taxes. However, the debtor's actions do not indicate that the debtor has made such sweeping changes in his attitudes and beliefs. The debtor filed

false tax withholding certificates with his employer as late as February, 1989. The debtor amended the February, 1989 certificate in March, 1989, to show ten (10) exemptions for dependents and other allowances after being notified by his employer's attorneys that upon the filing of any withholding certificate indicating that an employee was exempt from withholdings, by law, the employer was required to forward the certificate to the Georgia State Department of Revenue. The debtor in an appeal to the Court of Appeals for the Eleventh Circuit from a decision of the United

States Tax Court maintained that the assessing of federal income tax against him violated his constitutional rights until the appeal was dismissed as frivolous on August 9, 1989, some six (6) months after filing this proceeding.

This court finds that the debtor's proposed Chapter 13 plan was filed to stop the accrual of interest and penalties allowed under the tax laws of the United States and to thwart the IRS's legitimate collection efforts. The Chapter 13 plan was proposed to prevent the collection of penalties and interest allowed when a taxpayer files false or fraudulent returns or files no return. The only delinquent debt shown in the debtor's petition and schedules is the debt owed the IRS. The debtor has listed only one unsecured creditor in his petition and schedules and is current on his home mortgage. The debtor filed this Chapter 13 proceeding to frustrate, hinder or delay the collection efforts of the IRS. The debtor is attempting to avoid a legal obligation through the use of the

bankruptcy laws. The debtor does not seek a fresh start. To the contrary this proceeding is nothing more than his latest maneuver in his ongoing dispute with the IRS.

2. The circumstances under which the debtor has contracted his debts and his demonstrated bona fides or lack of same in dealing with his creditors.

The only substantial obligation owed by the debtor is for taxes, interest, and penalties owed to the IRS because of the debtor's failure to file tax returns or have taxes withheld from his salary. The debtor pursued a frivolous lawsuit against the IRS and filed fraudulent withholding certificates with his employer. "In essence, the debtor willfully failed to report any tax liabilities, purposefully prevented the collection of any taxes by the Internal Revenue Service, and ultimately filed a Chapter 13 petition in an attempt to have those unreported, unpaid liabilities discharged." Hazel v. Internal Revenue Service, 95 B.R. 481 (E.D. Mich. 1988). "The failure to file federal tax returns, when coupled with the filing of false W-4 forms, has been held to constitute fraud. (citations omitted)" In re: Hazel, 68 B.R. 287 (Bankr. E.D. Mich. 1986), aff'd, Hazel v. Internal Revenue Service, supra. The debtor has demonstrated bad faith in his dealings with the IRS and owes the taxes, penalties and interest to the IRS because of his fraudulent conduct.

"[W]henver a Chapter 13 petition appears to be tainted with a questionable purpose, it is incumbent upon the bankruptcy courts to examine and question the debtor's motives. If the court discovers unmistakable manifestations of bad faith confirmation must be denied. . . . The cornerstone of the bankruptcy courts has always been the doing of equity. The

protection and forgiveness inherit in the bankruptcy laws surely require~ conduct consistent with the concepts of basic honesty. Good faith or basic honesty is the very antithesis of attempting to circumvent a legal obligation through a technicality of the law." In re: Waldron, 785 F.2d 936, 941 (11th Cir. 1986). This debtor lacks this vital element, basic honesty. This debtor's Chapter 13 plan cannot be confirmed. "To do so would lend assistance to those who seek to avoid the payment of taxes. This court cannot use its constitutionally given authority to frustrate Congress, the Constitution itself, and the laws of the United States." In re: Hazel, supra. In addition, when bad faith is evident, and the debtor lacks a commitment to the rehabilitative intent of Chapter 13, and it is apparent to the court that the debtor's filing is an abuse of the bankruptcy process, dismissal of the debtor's case is appropriate. See, 11 U.S.C. §105.

It is therefore ORDERED that confirmation of the debtor's plan is denied, and the Chapter 13 case is dismissed.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 30th day of January, 1990.